

Introduced by Senator Hernandez

December 1, 2014

An act to amend Section 14009.5 of the Welfare and Institutions Code, relating to Medi-Cal.

LEGISLATIVE COUNSEL'S DIGEST

SB 33, as introduced, Hernandez. Medi-Cal: estate recovery.

Existing law provides for the Medi-Cal program, which is administered by the State Department of Health Care Services and under which qualified low-income persons receive health care benefits. The Medi-Cal program is, in part, governed and funded by federal Medicaid provisions.

Existing federal law requires the state to seek adjustment or recovery from an individual's estate for specified medical assistance, including nursing facility services, home and community-based services, and related hospital and prescription drug services, if the individual was 55 years of age or older when he or she received the medical assistance. Existing federal law allows the state, at its own option, to seek recovery for any items or services covered under the state's Medicaid plan.

Existing state law, with certain exceptions, requires the department to claim against the estate of a decedent, or against any recipient of the property of that decedent by distribution or survival, an amount equal to the payments for Medi-Cal services received or the value of the property received by any recipient from the decedent by distribution or survival, whichever is less. Existing law provides for certain exemptions that restrict the department from filing a claim against a decedent's property, including when there is a surviving spouse during his or her lifetime. Existing law requires the department, however, to make a claim upon the death of the surviving spouse, as prescribed. Existing

law, which has been held invalid by existing case law, provides that the exemptions shall only apply to the proportionate share of the decedent's estate or property that passes to those recipients, by survival or distribution, who qualify for the exemptions.

This bill would instead require the department to make these claims only in specified circumstances for those health care services that the state is required to recover under federal law, and would define health care services for these purposes. The bill would delete the proportionate share provision and would delete the requirement that the department make a claim upon the death of the surviving spouse. The bill would also require the department to provide a current or former beneficiary, or his or her authorized representative, upon request and free of charge, with the total amount of Medi-Cal expenses that have been paid on his or her behalf that would be recoverable under these provisions, as specified. The bill would apply the changes made by these provisions only to individuals who die on or after January 1, 2016.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 14009.5 of the Welfare and Institutions
2 Code is amended to read:
3 14009.5. (a) Notwithstanding any other provision of this
4 chapter, the department shall claim against the estate of the
5 decedent, or against any recipient of the property of that decedent
6 by distribution or survival an amount equal to the payments for
7 the health care services received or the value of the property
8 received by any recipient from the decedent by distribution or
9 survival, whichever is ~~less~~. *less, only in either of the following*
10 *circumstances:*
11 ~~(b) The department may not claim in any of the following~~
12 ~~circumstances:~~
13 ~~(1) The decedent was under 55 when services were received,~~
14 ~~except in the case of an individual who had been an inpatient in a~~
15 ~~nursing facility.~~
16 ~~(2) Where there is any of the following:~~
17 ~~(1) Notwithstanding paragraph (2), against the real property~~
18 ~~of a decedent who was an inpatient in a nursing facility in~~

1 *accordance with Section 1396p(b)(1)(A) of Title 42 of the United*
2 *States Code.*

3 *(2) (A) The decedent was 55 years of age or older when the*
4 *individual received health care services.*

5 *(B) The department shall not claim under this paragraph when*
6 *there is any of the following:*

7 ~~(A)~~

8 ~~(i) A surviving spouse during his or her lifetime. However, upon~~
9 ~~the death of a surviving spouse, the department shall make a claim~~
10 ~~against the estate of the surviving spouse, or against any recipient~~
11 ~~of property from the surviving spouse obtained by distribution or~~
12 ~~survival, for either the amount paid for the medical assistance~~
13 ~~given to the decedent or the value of any of the decedent's property~~
14 ~~received by the surviving spouse through distribution or survival,~~
15 ~~whichever is less. Any statute of limitations that purports to limit~~
16 ~~the ability to recover for medical assistance granted under this~~
17 ~~chapter shall not apply to any claim made for reimbursement.~~
18 ~~spouse.~~

19 ~~(B)~~

20 ~~(ii) A surviving child who is under age 21. 21 years of age.~~

21 ~~(C)~~

22 ~~(iii) A surviving child who is blind or permanently and totally~~
23 ~~disabled, within the meaning of Section 1614 of the federal Social~~
24 ~~Security Act (42 U.S.C.A. U.S.C. Sec. 1382c).~~

25 ~~(3) Any exemption described in paragraph (2) that restricts the~~
26 ~~department from filing a claim against a decedent's property shall~~
27 ~~apply only to the proportionate share of the decedent's estate or~~
28 ~~property that passes to those recipients, by survival or distribution,~~
29 ~~who qualify for an exemption under paragraph (2).~~

30 ~~(e)~~

31 ~~(b) (1) The department shall waive its claim, in whole or in~~
32 ~~part, if it determines that enforcement of the claim would result in~~
33 ~~substantial hardship to other dependents, heirs, or survivors of the~~
34 ~~individual against whose estate the claim exists.~~

35 ~~(2) The department shall notify individuals of the waiver~~
36 ~~provision and the opportunity for a hearing to establish that a~~
37 ~~waiver should be granted.~~

38 ~~(c) (1) The department shall provide a current or former~~
39 ~~beneficiary, or his or her authorized representative designated~~
40 ~~under Section 14014.5, upon request and free of charge, with the~~

1 *total amount of Medi-Cal expenses that have been paid on behalf*
2 *of that beneficiary that would be recoverable under this section.*

3 (2) *The department shall permit a beneficiary to request the*
4 *information described in paragraph (1) through the Internet, by*
5 *telephone, by mail, in person, or through other commonly available*
6 *electronic means.*

7 (3) *The department shall conspicuously post on its Internet Web*
8 *site, a description of the methods by which a request under this*
9 *subdivision may be made, including, but not limited to, the*
10 *department's telephone number and any addresses that may be*
11 *used for this purpose. The department shall also include this*
12 *information in its pamphlet for the Medi-Cal Estate Recovery*
13 *Program and any other notices the department distributes to*
14 *beneficiaries regarding estate recovery.*

15 (d) *The following definitions shall govern the construction of*
16 *this section:*

17 (1) *"Decedent" means a beneficiary who has received health*
18 *care under this chapter or Chapter 8 (commencing with Section*
19 *14200) and who has died leaving property to others either through*
20 *distribution or survival.*

21 (2) *"Dependents" includes, but is not limited to, immediate*
22 *family or blood relatives of the decedent.*

23 (3) *"Health care services" means only those services required*
24 *to be recovered under Section 1396p(b)(1)(B)(i) of Title 42 of the*
25 *United States Code.*

26 (e) *The amendments made to this section by the act that added*
27 *this subdivision shall apply only to individuals who die on or after*
28 *January 1, 2016.*